IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 372 OF 2007

1. Shri Aleixandre D' Costa
   Represented by his Attorney
   his wife, Smt. Mary Carma
   Santana Fernandes D' Costa.

2. Smt. Mary Carma Santana
   Fernandes D' Costa

   Both residents of House No.631,
   Xiro Carmona, Salcete, Goa. ..... Petitioners
   (Original Plaintiffs)

V e r s u s

1. Smt. Joanita Fernandes e Mascarenhas

2. Shri Astrio Patrocinho Pascal Mascarenhas
   Both residents of House No. 358/A,
   Naikavaddo, Post Chinchinim,
   Salcete, Goa. ..... Respondents
   (Original Defendants)

Mr. A. F. Diniz, Advocate for the Petitioners.

Mr. C. A. Coutinho, Advocate for the Respondents.

CORAM: R. S. MOHITE, J.

DATE: 12th October, 2007.

JUDGMENT

Heard. Rule.

2. Rule made returnable forthwith.

3. This petition impugnes Order dated 19/06/2007 passed by the IInd Additional Civil Judge, Senior Division at Margao, under exhibit D36, in

Special Civil Suit No.90/2002/II. It appears from the roznama that the plaintiff filed a suit on 19.09.2002, seeking a declaration that the defendant had no right to close the suit access and also seeking mandatory injunction for demolition of the suit structures as also permanent injunction in respect of the trees in the suit land. In due course, written statement was filed and the trial commenced. The evidence of petitioner no.2 was completed on 20.02.2007 and thereafter, the matter was listed for further evidence on 10.04.2007, on which date it was adjourned to 19.06.2007. On 19.06.2007, the petitioner sought an adjournment as the witness whom they wished to examine was a Government Servant. A request was made to the Court to adjourn the matter on any Saturday. However, the Court rejected the said application and made observations in the roznama that the plaintiff's evidence was closed and adjourned the matter for defence evidence. In the case of Salem Advocate ***Bar Association T. N. v. Union of India ((2005) 6 S.C.C. 344),*** the Apex Court has opined that the provision for not granting more than three adjournments is directory and that the Court has the power to grant more than three adjournments when special and extraordinary circumstances can be shown. In the present case, request was that the witness being a Government Servant , will be examined on a working Saturday. It is seen that three adjournments which were sought were not consecutive. The prayer which was sought could have been granted by the Court and could not have resulted in any major delay in deciding the matter. As against this, shutting the plaintiff's evidence would defeat the ends of justice.

4. Apart from this, it is seen in the application for adjournment, the defendant's Advocate had given an endorsement of No Objection. In my view, a short adjournment could have been granted or if any Saturday was not convenient, then an adjournment to any other date could have been granted to enable the plaintiff to file an application for summoning the witness. In this view of the matter and in the interest of justice, I am inclined to grant this petition.

5. Rule is made absolute in terms of prayer Clause (a) with a payment of costs of Rs.5,000/- to the respondents, to be paid within three weeks.

6. The Petition stands accordingly disposed off.

R. S. MOHITE, J.

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